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ABSTRACT

Perhaps the most fundamental question before administrative boards and the courts is the meaning of terms and conditions of employment. The Academic Collective Bargaining Information Service has analyzed state laws, reviewed board and court decisions, and has read numerous reports to provide a preliminary, yet comprehensive, picture of the scope of public sector bargaining and to search for early trends being shaped by new laws and case decisions. Issues discussed are: (1) disputed settlement; (2) hours, calendar, and workload; (3) employee perquisites; (4) institutional direction and resources; (5) personnel policies; (6) union security; and (7) wages and salaries. (Author/KE)

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*Academic Collective Bargaining Information Service*
*1818 R Street, N.W. / Washington, D. C. 20009 / 202/387-3760*

*George Ward Angell*
*Director*

*Edward P. Kelley, Jr., Esq.*
*Assistant Director*

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# SCOPE OF PUBLIC SECTOR BARGAINING IN 14 SELECTED STATES

The data herein should be of help to those who are preparing to negotiate a contract, to shape or reshape legislation, to organize an election campaign, or simply to understand what is happening as case by case decisions expand the meaning of state collective bargaining laws. Perhaps the most fundamental question before administrative boards and the courts is, "What does the phrase, 'terms and conditions of employment' include?" ACBIS staff* have analyzed state laws, reviewed board and court decisions, and have read numerous reports in order to provide a preliminary, yet comprehensive, picture of the scope of public sector bargaining, and to search for early trends being shaped by new laws and case decisions.

Attached charts, pages 6-11, provide detailed references, item by item, for each of 14 states where case law has been located. ACBIS hopes to extend this study to other states sometime in the future.

Edward P. Kelley, Jr.
Associate Director

George W. Angell
Director

* A number of people helped ACBIS collect information, most notably, Ronald Kurach, Thomas Joyner and Ronald Bush.

Note. ACBIS would appreciate help from its readers. If you know of board or court decisions not reflected in the charts, please send us a note.



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SCOPE OF PUBLIC SECTOR BARGAINING
IN 14 SELECTED STATES

I. DISPUTE SETTLEMENT

In fourteen of fifteen "decisions," nine states leave little doubt that grievance-related issues are mandatorily bargainable if one party places them on the table. Of the 14 states reviewed, only Pennsylvania reserves to management the right to decide whether or not to bargain about binding arbitration as a method of settling grievances, while six states make it a mandatory subject of bargaining.

II. HOURS, CALENDAR AND WORKLOAD

Five states treat class size as a mandatory subject of bargaining, while four states declare it to be a management prerogative. In two (New York and Wisconsin) of those four states, however, case decisions indicated that negotiating the "impact" of a change in class size is mandatory.

Hours and work-hour schedules are generally mandatory subjects in all states except Nevada. Pennsylvania makes one related exception and that is that the employer has the right to decide when and how to notify employees about work schedules.

Changes in hours or duties are mandatory subjects in Kansas, New Jersey, and New York. In one Wisconsin case, the employer's right to make unilateral changes as stated in the negotiated contract was upheld by a WERC decision.

School calendar is a mandatory subject in four states, but Pennsylvania, Connecticut and New Jersey hold it to be a management prerogative.

The only available two decisions relative to the "impact" of changes" in curriculum or new programs were made in Wisconsin. Both ruled the impact of changes to be mandatory subjects.

Two states (Connecticut and New York) have ruled as mandatory subjects the employer's wish to contract with an outside agency for work that might be done by members of the unit.

Massachusetts has taken the initiative in deciding through legislation that standards of productivity and performance of employees is a mandatory subject of bargaining. To date there has been little substantive action to interpret the meaning of "standards." Nevada law makes standards of productivity a management right.

III. EMPLOYEE PERQUISITES

Pension and retirement terms are mandatory in three states and illegal (non-permissible) in at least three others. States are obviously experimenting with different methods of treating this subject.

There is general agreement (based on a handful of decisions)

to date that the following are mandatory subjects of bargaining: insurance programs; reimbursement for job-related personal property damage; tuition for continuing education; leaves of absence; holidays and vacations; parking privileges; uniforms required by the job.

Pennsylvania, with no visible support from other states, has ruled as management rights: employee physical examinations; sick leave; and employee transportation service.

IV. INSTITUTIONAL DIRECTION AND RESOURCES

In ten states, by legislation and case decisions, there is a clear determination to reserve to management over-all decisions (level of funding, mission, hiring, supervision, job assignment, size of work force, organization, etc.) In all but one state (California) management is permitted to bargain, if it wishes, some aspects of its over-all decisions. There is also a trend toward making mandatory the bargaining of the "impact" of such decisions on terms and conditions of employment. As an example, New York State, while recognizing the employer's right to cut the budget (level of funding), requires the employer to negotiate the impact of that cut on salaries, workloads, job retrenchment, etc. New York State also made a benchmark decision in determining that, although the employer had the right to determine unilaterally the overall size of the work-force, he must negotiate special cases where safety is involved (e.g. the number of police for a special assignment). A few states such as Nevada, make any matter relating to safety a mandatory subject of bargaining.

In a number of cases, unions have tried to negotiate conditions of employment for non-unit members, such as graduate assistants or part-time teachers. In one New York case a union tried to negotiate limits on administrators' terms of appointment and retirement. All cases to date relating to non-unit employees have been resolved in favor of management rights.

There is a clear dichotomy of state posture about whether matters covered by statute (other than the collective bargaining law) are bargainable or not. Three of the fourteen states (Connecticut, Hawaii, and Kansas) have made the negotiated contract the prevailing document should it conflict with statutes such as the education or civil service law. Five states prohibit the bargaining of matters covered by statute and in at least one state (Minnesota) the rules and regulations promulgated by a state agency have priority over contractual agreements. New Jersey reversed itself in 1974 by removing language in the law that prohibited bargaining relative to matters covered by existing statute.

V. PERSONNEL POLICIES

Case decisions in seven states indicate that the establishment of certain specified personnel policies (standards of recruitment for new employees, standards of services, employee code of ethics, academic freedom) and personnel policies in general, are considered to be management rights.

Probationary periods, promotion procedures, methods of teacher evaluation and removal are generally held to be mandatory items of bargaining in seven states.

Although there are only a few such case reviews relative to rules and regulations governing teachers' powers and duties, teacher methods of disciplining students, and selection of instructional supplies, those available indicate general agreement that such subjects are mandatory items of bargaining.

On the other hand, referral of students for specialized help, and an employee discretionary fund for instructional materials have been held as management prerogatives.

There is considerable disagreement among the states as to whether or not preparation time for teachers, in-service training for teachers and selection of text books should be permissible or mandatory.

VI. TECHNICAL ASPECTS OF THE COLLECTIVE BARGAINING PROCESS

Prior to actual bargaining, the parties attempt to agree upon ground rules relative to the bargaining process. Discussions of such ground rules have led to impass and a number of case decisions.

To date the following items have been held to be required on the part of management: to bargain during strike; to continue bargaining after budget submission date; to supply information about budget and expenditures; to provide a list of teachers leaving and new teachers hired.

Also held to be a mandatory subject of pre-bargaining negotiations is the nature and purveyor of publicity about the negotiations in progress.

Held to be the right of management, however, are the following: to inform employees of its offer at the table; to bargain publicly (sunshine law); to pass a new policy rather than add items to contract; and to bargain a contract longer than three years.

VII. UNION SECURITY

About the only three factors relative to union security that have been clarified by law or case review in more than three states are those of agency shop (or service fee), right of exclusive representation, and the impact of retrenchment. Four of these 14 states require a service fee. New York prohibits agency shop. Two states (Michigan and Oregon) made agency shop a mandatory subject of bargaining, while Wisconsin requires a referendum on the subject.

Impact of retrenchment has been held as a mandatory subject of bargaining in four states (California, Nevada, New York, and Wisconsin).

The right of exclusive representation is well established in the various state laws. Decisions as a result of two challenges (New York and Pennsylvania) upheld special aspects of this union privilege.

Some states (Hawaii, Minnesota, New York) require the employer to provide dues check-off payroll services. The only case review noted of check-off privileges was in Oregon and it held the matter to be a mandatory subject of bargaining. Three other states (Connecticut, Pennsylvania and Nevada) by law make dues check-off a mandatory subject of bargaining.

Maintenance of membership has been found to be a non-permissible subject of bargaining in N.Y. but is required by law in Pennsylvania.

Time off for union activities has been upheld as a mandatory subject in New York as has length of contract in Oregon and Nevada.

VIII. WAGES AND SALARIES

Amount of wages as a mandatory item of negotiations is perhaps the area of most unanimity among the thirteen states since all of the laws include the usual phrase, "wages, hours, and other terms..." Certain side issues are still being debated. As an example, a case decision in Connecticut declares that a demand for "parity" in wages is non-permissible while a somewhat similar case in New York rules that the issue of "parity" is mandatory.

Retroactivity of a negotiated wage increase and pay for extra-curricular duties have been uniformly determined to be mandatory bargaining items.

Salaries for employees assigned to and paid by federal projects have been held to be a non-permissible subject of bargaining in Connecticut.

Incremental longevity steps in a salary schedule has been ruled as non-permissible for bargaining in Hawaii.

IX. MISCELLANY

Oregon has ruled that methods of general consultation is a mandatory subject of bargaining.

Pennsylvania has a ruling that reserves consultation on budget, prior to adoption, as a management right.

Establishment of joint committees in New York, and planning of facilities in Michigan, have been held as mandatory subjects.

Three states disagree on residency requirements. Michigan and Wisconsin hold it to be a mandatory subject while New York reserves it as a management right.

Nevada apparently is the only state (of the 14) that makes a "savings" clause a mandatory subject of bargaining.

## COMMENTS

1. There is a growing body of case decisions in public sector bargaining. In general, however, it is sketchy and difficult to locate and accession. Only a few states have made arrangements to publish in an organized fashion the administrative and court decisions made in their state jurisdictions. This lack of information is detrimental to all parties.

2. The mandatory subjects on which there is the greatest agreement among the states are:

- wages
- hours
- grievance procedures
- probationary periods of employment
- promotion procedures
- methods of teacher evaluation
- methods of teacher removal

3. Those items which have been most uniformly assessed to be management rights are:

- institutional mission and program
- level of funding
- hire employees
- discharge employees
- supervision of employees
- job assignment
- conditions of employment for non-unit members
- organization
- size of workforce
- standards of service
- standards of recruitment

4. Those subjects about which there is most disagreement as to bargainability are:

- parity in wages
- class size
- retirement benefits
- agency shop
- pre-eminence of negotiated contracts over existing laws
- preparation time for teachers
- selection of text books
- in-service education of employees
- school calendar

5. It is almost impossible to review accurately thirty years of case history relative to the Taft-Hartley law which covers private enterprise. Nevertheless a reading of several reviews provides insight as to a number of items that have become mandatory subjects of bargaining. By reviewing the list of subjects provided in the next to last column of the chart, the reader may obtain a general comparison of state and federal scope of bargaining. The body of case decisions for colleges and universities is necessarily sketchy because NLRB only accepted jurisdiction in 1970. However, a landmark opinion of the New York City Regional Director in a case emanating from St. John's University throws into question the bargainability of all campus governance issues. The full board (NLRB) has yet to rule on the subject.

| UNION DEMAND TO NEGOTIATE: | Is it Mandatory[1], Permissible[2], or Non-Permissible[3] for the Employer to Negotiate the Union Demand?[4] | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | CALIF. | CONN. | HAWAII | KANSAS | MASS. | MICH. | MINN. | N.Y. | OREGON | PENN. | S. DAK. | WISC. | NEVADA | FED.LAW | N.J. |
| DISPUTE SETTLEMENT | | | | | | | | | | | | | | | |
| Binding Arbitration of Grievances | | M | | | | M | | M | M | P | | M | M | | |
| Fact-finding recommendations | | M | | | | M | | | | | | M | | | |
| Grievance Procedures | | | | M | | | | | | | M | | M | M | M |
| Time to process grievance without loss of pay | | | | | | | | M | | | | | | | |
| HOURS & WORKLOAD | | | | | | | | | | | | | | | |
| Class size | | M | M | P | | M | | P | M | | P | P | M | | |
| "Impact" of change in Class Size | | | | | | | | M | | | | M | | | |
| Workload | M | M | | | | | | M | | P | | | M | | |
| Hours & Work hour Schedules | M | M | M | M | M | M | M | M | | M P[5] | M | M | P | M | M |
| Changes in Employees' duties or hours during the term of the contract | | | | M | | | | M | | | | P[6] | | | M |
| School Calendar | | P | | | | M | | M | | P | | M | M | | P |
| "Impact" of change in curriculum content | | | | | | | | | | | | M | | | |
| "Impact" of new programs | | | | | | | | | | | | M | | | |
| Standards of employee productivity & performance | | | | | M | | | | | | | | P | | |
| Contracting work with outside agency | | M | | | | | | | M | | | | | M | |
| EMPLOYEE PERQUISITES | | | | | | | | | | | | | | | |
| Pension & Retirement terms | | | NP | M | | M | NP | NP | M | | | | | M | |
| Insurance: Life, medical, dental, etc. | | | | M | | | | M | | | | | M | M | |
| Employee physical examinations | | | | | | | | | | P | | | | | |
| Reimbursement for job-related personal property damage | | | | | | | | M | | | | | | | |
| Reimbursement of tuition for continuing education | | | | | | | | M | | | | | | M | |
| Sick leave, sick leave bank, etc. | | | | M | | | | M | | P | | | M | M | |
| Conditions governing "outside" employment | | | | | | | | | | | | | | | M |

| | CALIF. | CONN. | HAWAII | KANSAS | MASS. | MICH. | MINN. | N.Y. | OREGON | PENN. | S. DAK. | WISC. | NEVADA | FED. LAW | N.J. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Leaves of Absence | | | | | | | | M | M | | | | M | | | |
| Holidays, vacations, etc. | | | | M | | M | | M | | | | | M | M | | |
| Employee transportation Service | | | | | | | | | | P | | | | | | |
| Parking privileges for employees | | | | | | | | M | | | | | | | | |
| Uniforms, wearing apparel, etc. | | | | M | | | | | | | | | | | | |
| INSTITUTIONAL DIRECTION AND RESOURCES | | | | | | | | | | | | | | | | |
| Hire, discharge employees | | | | P | | | P | | | P | | P | P | | | |
| Job assignment & transfer of employees | | | P | P | | | | P | | | P | P | P | | | |
| Supervise, direct work of employees | | | | P | | | P | | | P | | P | P | | | |
| Employment of part-time employees (substitutes) | | | | P | | | | | | | P | | P | | | |
| Size & number of work force:#of employees | | | | | | | P | P M[7] | | | | | P | | | |
| Retrenchment-number, time, areas | | | | P | | | | | | | | P | P | | | |
| Distribution of resources, differential staffing | | | | P | | | | P | | | | | M | | | |
| Organization, reorganization | NP | | | P | | | P | P | | P | | | P | | P | |
| Emergency executive powers | | | | P | | | | | | | | | P | | | |
| Overall budget; level of support | | | | P | | | | P | | P | | | | | | |
| Classification or rank of employees | | | NP | | | | | | | | | | | | | |
| Promote employees | | | | P | | | | | | | | P | | | | |
| Composition of committees to evaluate faculty | | | | | | | | P | | | | | | | | |
| Discipline employees (demote, reprimand, suspend, etc. | | | | P | | | | | | | | P | | | | |
| Policies re:non-unit employees | | | | | | | | P | | | | | | | | |
| Non-job related benefits | | | | | | | | P | | | | | | | | |
| Rank, responsibility, evaluation,& retirement of administrators | | | | | | | | P | | | P | | | | | |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Employer business procedures (technology, payroll, etc.) | | | | M | | | P | P | | P | | P | | M | |
| Mission and purpose of employer | | | | | | | P | P | | P | | NP | | | |
| Program content & services | | | | P | | | | P | | P | | P | | | |
| Initiate new or change in educational programs | | | | | | | P | P | | P | P | P | | | |
| Content of Laws other than CB | | P | P | P NP[3] | | | NP | NP | NP | NP | | NP | | | P |
| PERSONNEL POLICIES | | | | | | | | | | | | | | | |
| Personnel policies (not education policies) | | | | | | | P | | | | | P | | | |
| Standards of recruitment for new employees | | | | | | P | | P | | | | | | | |
| Probationary period of employment | | | | M | | | | | | | | | | | |
| Promotion procedures | M | | | | | M | | M[9] | | | | | | | |
| Teacher evaluation procedures | | | | M | | M | | M | | | | M | P | | P |
| Standards of services | | | | | | | | | | P | | | P | | |
| Employee code of ethics | | | | P | | | | | | | | | | | |
| Academic Freedom | | | | P | | | | | | | | | | | |
| Procedures for removal, discipline, resignation of employees | | | | M | | | M | M | | | | M | M | M | |
| Rules & regulations governing teachers' powers and duties | | | | | | | | M | | M | | | | | |
| Referral of students to specialized help | | | | | | | | | | | | P | | | |
| Teacher methods of disciplining students | | | | | | | | | | | | M | M | | |
| Preparation time for teachers | | | P | | | | | | M | P | P | | M | | |
| Teachers in-service training | | | | | | | | P[10] | | | | M | M | | |
| Selection of texts | | | | P | | M | | | | | | | | | |
| Employee discretionary fund for materials | | | | | | | | | | | P | | P | | |
| Instructional supplies | | | | | | | | | | | | | M | | |
| Procedures for granting tenure | | | | | | | | | | | | | | | P |

| | CALIF. | CONN. | HAWAII | KANSAS | MASS. | MICH. | MINN. | N.Y. | OREGON | PENN. | S.DAK. | WISC. | NEVADA | FED. LAW | N.J. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **TECHNICAL ASPECTS OF THE CB PROCESS** | | | | | | | | | | | | | | | |
| Nature of publicity re: negotiations | | M | | | | | | | | | | | | | |
| No communication during negotiations from employer to employees about employer offers at the table. | | | | | | P | | | | | | | | | |
| To bargain in public (sunshine law) | | | | | P | P | | | | P | | | | | |
| To bargain during strike | | | | | | M | | | | | | | | | |
| (To continue bargaining) after budget submission or adoption | | | | | | M | | | | | | | | | |
| Availability of budget, audit, statements | | | | | | I* | | | | | | | | | |
| Availability of lists of teachers leaving & hired | | | | | | I* | | | | | | | | | |
| Accessibility to teacher personnel records | | | | | | | | | | | | M | | | |
| A written contract rather than employer passing a new policy | | | | | | P | | | | | | | | | |
| Any mandatory subject rejected by legislature | | | | | | M | | | | | | | | | |
| A contract binding on successive administrations | | | | | | | | | | U-1 | | | | | |
| Length of contract (beyond three years) | | | | NP | | | NP | | | | | | | | |
| **UNION SECURITY** | | | | | | | | | | | | | | | |
| Right to be "exclusive" representative | NP[11] | 11 NP | 11 NP | 11 NP | 11 NP | 11 NP | 11 NP | NP M[11] | 11 NP | NP[11] U-2 | 11 NP | 11 NP | 11 NP | 11 NP | 11 NP |
| Agency shop (service fee) | | 11 NP | 11 NP | | NP M[11] | M | 11 NP | 12 NP | M | | | 13 M | | M | NP |
| Dues check-off | | M | NP[11] | | | | 11 NP | 14 NP | M | M | | | M | M | |
| Maintenance of membership | | | | | | | | NP | | M | | | | M | |
| Paid or unpaid time off for union activities | | | | | | | | M | | | | | | | |
| Impact of retrenchment | M | | | | | | | M | | | | M | M | M | |
| Length of contract | | | | | | | | | M | | | | M | | |
| **WAGES** | | | | | | | | | | | | | | | |
| Wages, salaries, merit pay, incentive pay, etc. | M | M | M | M | M | M | M | M | M | M | M | M | M | M | |
| Assignment to & wages for extracurricular duties outside regular work hours | | M | | M | | | | M | | M | | | | M | |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Parity of wages with other employees | | NP | | | | | | M | | | | | |
| Retroactivity of negotiated wage increases & other items | M | M | | | | | | | | M | | M | |
| Salaries specified by Fed. Govt. on Federal projects | | NP | | | | | | | | | | | |
| Incremental longevity salary steps | | NP | | | | | | | | | | | |
| MISCELLANY | | | | | | | | | | | | | |
| General consultation; meet & discuss | | | | | | | | | M | | | | |
| Union consultation prior to adoption of budget | | | | | | | | | | P | | | |
| Establishment of joint committees | | | | | | | | M | | | | | |
| Planning of facilities | | | | | | M | | | | | | | |
| Residency requirements | | | | | | M | | P | | | | M | |
| Savings clause | | | | | | | | | | | | | M |
| Management rights clause | | | | | | | | | | | | | |
| Safety rules | | | | | | | | | | | | | |

FOOTNOTES

1. Mandatory (M) means that if either party wishes to bargain the issue, the other party must negotiate in good faith.

2. Permissible (P) in essence means that the particular demand may be negotiated only if the employer wishes to do so. If the employer prefers, he may reject negotiation, thereby retaining the managerial right to take unilateral action on the matter as he wishes.

3. Non-permissible (NP) means that to negotiate the item is illegal, and even if bargained, that part of the contract is non-functioning.

4. A space left blank may be interpreted as meaning that the item was neither clearly classified by the law nor by board or court decisions known to date.

5. Notification of employee re work schedule is management prerogative.

6. Permissible in a special case under the particular management rights clause negotiated in the contract.

7. Mandatory only when related to safety.

8. Kansas has two laws. Contract is prevailing document for teachers; but other law prevails over contract for other public employees.

9. Mandatory in New York State except in competitive class.

10. Management right when attendance is voluntary.

11. Not negotiable because law requires it.

12. New York law has been interpreted to prohibit agency shop.

13. Not bargainable because a referendum is required if a party wants agency shop.

14. In New York State the right of dues check off accompanies certification but only for those employees who sign authorization cards.

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I* These demands are for information only. To withhold such information is an unfair labor practice.

U-1 This demand is for the duration of the contract period. The Court upheld the union demand.

U-2 This demand was upheld by WERC as the sole privilege of a certified bargaining agent.